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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/544,101

08/02/2005

Konrad Tetenborg

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JACOBSON HOLMAN PLLC  
400 SEVENTH STREET N.W.  
SUITE 600  
WASHINGTON, DC 20004

EXAMINER

DESAI, HEMANT

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

03/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/544,101	<b>Applicant(s)</b> TETENBORG ET AL.	
	<b>Examiner</b> Hemant M. Desai	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 and 10 is/are allowed.
- 6) ☒ Claim(s) 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102/103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22-25, are rejected under 35 U.S.C. 102(b) as being anticipated by British Patent (1057264).

British Patent ('264) discloses a tubular film roll (see fig. 1) comprising a film tube that includes four side walls (front, back and two gussets).

The product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. See MPEP 2113. The product-by-process claims 22-25 results in no structure different from the British Patent ('264). The applicant is claiming the tubular film roll comprising film tube. Whether the film tube having four separated and individual side walls cut from a single film web and having four seams or the tube is made from a folded web results in no structure different from the British Patent.

Regarding claim 12, British Patent discloses that the walls are gusseted (see page 2, lines 128-1300).

Regarding claim 13, British Patent discloses that discloses that the front sides of the side-gusseted film tube lie over one another.

Regarding claim 14, British Patent discloses that the side gussets are staved toward the direction of the tube.

Claim 1 is rejected under 35 USC 103(a) as obvious over British Patent ('264).

British Patent discloses each and every structural element of the tubular film roll set forth in claim 22.

British Patent discloses that the tubular film roll is made of multi-wall, but is silent as to the method of molding. The claimed phrase "a film tube having four separate and individual side walls" means that the tube was made by a four webs, as explained in the instant application.

Kitao (6195964) discloses process for manufacturing a bag from polymer film material, having four walls (7, 9, fig. 3a), cutting the web into four film segments (7,9) and sealing the connected film segments so as to form at least one sealed end of the bag (fig. 3b). Note that cutting the web into four segments is inherent part of Kitao's method of making the bag. Kato discloses that that making tube from four different webs is a known alternative to the tube made from the folded web, or other forming methods.

Therefore, even if "tube from four webs" results in different structural characteristics of the end product than other forming methods, it still would have been *prima facie* obvious at the time the invention was made to use a "four separate webs" in

British Patent as claimed since Kato teaches that tube made from four separate webs is recognized as a useful technique for forming tube.

***Allowable Subject Matter***

4. Claims 1-7 and 10 are allowed.

***Response to Arguments***

5. Applicant's arguments filed 1/25/2010 have been fully considered but they are not persuasive. Applicant's arguments regarding claims 22-25, Examiner would like to reiterate that the claims 22-25 are product-by-process claims. The product by process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. See MPEP 2113. The product by process claims 22-25 results in no structure that is different, as explained in the rejection above, from the British Patent.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/  
Primary Examiner, Art Unit 3721